

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ANTHONY ALBANESE and REGINA  
ALBANESE

Plaintiffs,

v.

AMERICAN HOME MORTGAGE; et al.,

Defendants.

3:11-cv-0765-LRH-VPC

ORDER

Before the court are defendants JP Morgan Chase Bank, N.A. (“JP Morgan”); Mortgage Electronic Registration Systems, Inc. (“MERS”); and California Reconveyance Corporation’s (“CRC”) motion to dismiss (Doc. #7<sup>1</sup>) and motion to expunge lis pendens (Doc. #8). Plaintiffs Anthony and Regina Albanese (“the Albaneses”) did not file an opposition.

The Albaneses purchased real property through a loan secured by a mortgage note and deed of trust. The Albaneses defaulted on the loan and defendants initiated non-judicial foreclosure proceedings. Subsequently, on September 26, 2011, the Albaneses filed a complaint against defendants alleging six causes of action: (1) NRS 107.073 and 107.077; (2) NRS 107.080; (3) unjust enrichment; (4) slander of title; (5) declaratory relief; and (6) quiet title. Doc. #1, Exhibit 1. Thereafter, moving defendants filed the present motion to dismiss to which the Albaneses did not

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<sup>1</sup> Refers to the court’s docketing number.

1 file an opposition. Doc. #7.

2 While the failure of an opposing party to file points and authorities in response to any  
3 motion shall constitute a consent to the granting of the motion under LR 7-2(d), the Albaneses'  
4 failure to file an opposition, in and of itself, is an insufficient ground for dismissal. *See Ghazali v.*  
5 *Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Before dismissing a case, a district court is required to  
6 weigh several factors: (1) the public's interest in the expeditious resolution of litigation; (2) the  
7 court's need to manage its docket; (3) the risk of prejudice to the defendant; 4) the public policy  
8 favoring disposition of cases on their merits; and (5) the availability of less dramatic sanctions. *Id.*

9 Here, these factors weigh in favor of dismissal. The need for the expeditious resolution of  
10 cases on the court's docket is strong. Moving defendants have an interest in resolving this matter in  
11 a timely manner. Further, there is a lack of prejudice to the plaintiffs because the Albaneses have  
12 shown an unwillingness to continue litigating their complaint which weighs in favor of granting the  
13 motion. Additionally, although public policy favors a resolution on the merits, the court finds that  
14 dismissal is warranted in light of these other considerations.

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16 IT IS THEREFORE ORDERED that defendants' motion to dismiss (Doc. #7) is  
17 GRANTED. Plaintiffs' complaint (Doc. #1, Exhibit 1) is DISMISSED without prejudice.

18 IT IS FURTHER ORDERED that defendants' motion to expunge lis pendens (Doc. #8) is  
19 GRANTED. Defendants shall have ten (10) days from entry of this order to prepare an appropriate  
20 order expunging the lis pendens and submit the same for signature.

21 IT IS SO ORDERED.

22 DATED this 28th day of March, 2012.



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25 LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE